

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

JAN 02 2018

Clerk, U.S. District Court
District Of Montana
Missoula

ROBERT A. LAKE,

Plaintiff,

vs.

MONTANA STATE PRISON,

Defendant.

CV 17-32-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations in this case on November 17, 2017, recommending that Plaintiff Robert A. Lake's ("Lake") Complaint be dismissed for failure to state a federal claim. Lake failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

After reviewing the record and finding no clear error,

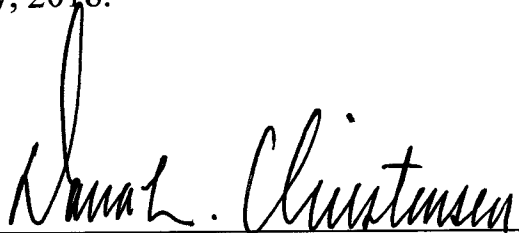
IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 11) are ADOPTED IN FULL. This matter is DISMISSED for failure to state a federal claim.

IT IS FURTHER ORDERED that the Clerk of Court is directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Lake failed to state a claim upon which relief may be granted.

DATED this 2nd day of January, 2018.



Dana L. Christensen, Chief Judge
United States District Court